

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN**

**CEF FUNDING LLC and
GE CAPITAL BUSINESS
ASSET FUNDING CORPORATION
OF CONNECTICUT,
Plaintiffs,**

v.

Case No. 06C0405

**JAA ENTERPRISES, LLC and
JOSEPH A. ARAMANDA,
Defendants.**

MEMORANDUM

Plaintiffs initiated the present action on April 4, 2006. It is not clear whether plaintiffs served defendants with the complaint, as the docket does not reveal a certificate of service or a waiver of service, but on May 26, 2006, defendants filed a motion to enlarge time to answer stating that their answers were due the following week. Ultimately, I granted defendants until October 22, 2006, to answer the complaint. To date, neither defendant has answered and plaintiff has not filed a motion for default.

Civil Local Rule 41.1 (E.D. Wis. 2003) states that where a plaintiff fails to effectuate service of process within 120 days, as required by Fed. R. Civ. P. 4(m), and the defendant has not waived service, then on 20 days notice, the court should dismiss the action without prejudice. Further, Civil Local Rule 41.2 (E.D. Wis. 2003) states that where a defendant has failed to answer or otherwise defend within six months from the filing of the complaint and the plaintiff has not moved for default judgment, the court may, after 20 days' notice, dismiss the action without prejudice.

In the present case, it is unclear which of these two rules apply. Well over six months have expired since the filing of the complaint and plaintiffs have either failed to serve defendants or have failed to file proof of service and failed to file a motion for default. And though defendants have appeared, they have not defended against the complaint. Regardless, the plaintiffs do not appear to be prosecuting this case.

Therefore, plaintiffs are put on notice that the court on its own motion shall dismiss this case without prejudice after twenty days from the date of this memorandum unless within that time plaintiffs take sufficient action to prosecute this case.

Dated at Milwaukee, Wisconsin, this 31 day of January, 2007.

/s _____
LYNN ADELMAN
District Judge